

# WAIVER OF SERVICE OF SUMMONS

TO: Keith A. Minoff, Esq.  
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of

Harvey v. Sprague et al., which is case number 04-30044-MAP  
(CAPTION OF ACTION) (DOCKET NUMBER)

in the United States District Court for the \_\_\_\_\_ District of  
Western Massachusetts. I have also received a copy of the complaint in the  
 action, two copies of this instrument, and a means by which I can return the signed waiver to you  
 without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this  
 lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process  
 in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit  
 or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in  
 the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am  
 acting) if an answer or motion under Rule 12 is not served upon you within 60 days after 3/18/04  
(DATE REQUEST WAS SENT)  
 or within 90 days after that date if the request was sent outside the United States.

3/29/04  
(DATE)

  
(SIGNATURE)  
 Bingham McCutchen LLP  
 as counsel for

Printed/Typed Name: Wave Systems Corp., a Delaware Corporation

AS \_\_\_\_\_ of \_\_\_\_\_

## Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons) and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

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Bingham McCutchen LLP  
as counsel for  
John McConaughy

Printed/Typed Name: \_\_\_\_\_

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Bingham McCutchen LLP  
as counsel for

Printed/Typed Name: John E. Bagalay

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Bingham McCutchen LLP  
as counsel for

Printed/Typed Name: Nolan Bushnell

AS \_\_\_\_\_ of \_\_\_\_\_

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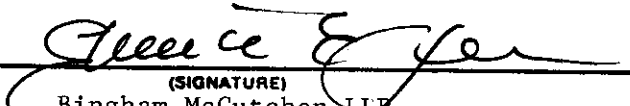
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Bingham McCutchen LLP  
as counsel for  
Printed/Typed Name: George Gilder

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Bingham McCutchen LLP  
as counsel for

Printed/Typed Name: Steven K. Sprague

AS President of Wave Systems Corp.

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Gerard T. Feeney  
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Bingham McCutchen LLP  
as counsel for

Printed/Typed Name: Gerard T. Feeney

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